UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:94-cr-00044-MOC

UNITED STATES OF AMERICA,)	
)	
)	
)	
Vs.)	ORDER
)	
JAMES STANLEY CALDWELL,)	
)	
Defendant.)	

THIS MATTER is before the court on defendant's "Application [Motion] for Enforcement of Order of Default Pursuant to Fed.R.App.P. Rule 26(b)." This motion appears to relate to defendant's earlier Motion to Vacate Under § 2255 (#50), which this court dismissed by written Order (#51), in which it determined that such petition was frivolous because "petitioner cannot assert a cognizable claim for relief under <u>Descamps</u> inasmuch as a conviction for common law robbery under North Carolina law is *always* a conviction for a violent felony as an act of violence is a necessary element in any formulation of the offense." Id. at 3.

Reading the instant motion liberally, defendant appears to seek a default against the government for not answering his frivolous petition. Defendant is advised that the government was under no obligation under Section 2255 to answer his petition unless and until directed to do so by this court. Fed. R. Gov. § 2255 Proc. 5(a) ("The respondent is not required to answer the motion unless a judge so orders.). Defendant's instant motion is, therefore, equally frivolous as the government was not obligated to answer or respond to a petition dismissed after initial review.

ORDER

IT IS, THEREFORE, ORDERED that defendant's Application [Motion] for Enforcement of Order of Default Pursuant to Fed.R.App.P. Rule 26(b) (#52) is DENIED as frivolous.

Signed: September 29, 2014